



In the Matter of

Distribution of 1999, 2000 and 2001
Digital Audio Recording Royalty Funds

Docket No. 2002-6 CARP DD 99-01

LIBRARY
OF
CONGRESS

ORDER

The Library of Congress is announcing the schedule of the proceeding to distribute royalties collected under chapter 10 of the Copyright Act for the 1999, 2000 and 2001 Musical Works Funds.

Negotiation period

In the interest of promoting voluntary agreements as to the distribution of the 1999-2001 Musical Works Funds, the Library is announcing a formal negotiation period in which the parties are encouraged to settle their differences. The parties are directed to report the status of their settlement negotiations no later than December 2, 2002. If complete settlements are not reached, the following schedule shall apply to the CARP proceeding to determine the distribution of the royalties.

The CARP proceeding

A. Commencement of the Proceeding. A CARP proceeding to distribute royalty fees under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of § 251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

B. Precontroversy Discovery Schedule and Procedures. Any party that has filed a Notice of Intent to Participate in this proceeding is entitled to participate in the precontroversy discovery period.

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Each party may request of an opposing party, nonprivileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The following is the precontroversy discovery schedule:

Action	Deadline
Notification of Settlements	December 2, 2002
Filing of Written Direct Cases	January 15, 2003
Requests for Underlying Documents Related to Written Direct Cases	January 22, 2003
Responses to Requests for Underlying Documents	January 29, 2003
Completion of Document Production	February 4, 2003
Follow-up Requests for Underlying Documents	February 10, 2003
Responses to Follow-up Requests	February 14, 2003
Motions Related to Document Production	February 20, 2003
Production of Documents in Response to Follow-up Requests	February 25, 2003

The precontroversy discovery period, as specified by § 251.45(b) of the rules, will begin on January 15, 2003, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate must file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's claim. Parties must comply with the form and content of written direct cases as prescribed in 37 CFR 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on January 15, 2003, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by January 22, 2003, and responses to those requests are due by January 29, 2003. Documents which are produced as a result of the requests must be exchanged by February 4, 2003. It is important to note that all initial document requests must be made by the January 22, 2003 deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by January 22, 2003; otherwise, the requesting party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by February 10, 2003, and responses to those requests are due by February 14, 2003. Any documentation produced as a result of a follow-up request must be exchanged by February 25, 2003. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in

its written direct case. As noted above, a party desiring production of that study or survey must make its request by January 22, 2003. If, after receiving a copy of the study, the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the February 10, 2003 deadline. Again, failure to make a timely follow-up request would waive the requesting party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by February 20, 2003. Typically, these motions are motions to compel production of requested documents for failure to produce them. Finally, all other motions, petitions and objections must be filed by February 28, 2003 the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, for example, petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is also required.

Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be delivered to the Copyright Office no later than 5 p.m. of the filing deadline date. Parties may deliver the pleadings to: Office of the Register of Copyrights, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20540; or alternatively, parties may send their pleadings by Federal Express to: Copyright Arbitration Royalty Panel (CARP), CARP Specialist, (Tel. 202-707-8380), Federal Express, 208 Second Street,

S.E., Washington, D.C. 20003, provided that the filing reaches the Copyright Office by the deadline. The Office cautions parties to use **only** the Federal Express address listed in this Order, to include the telephone number of the Office, and to direct the package to the attention of the CARP Specialist. The Federal Express office will notify the Copyright Office upon receipt of a properly addressed package and the Copyright Office will make arrangements to pick up the package the same day. Under no circumstances will the Office make arrangements to retrieve a package from any other Federal Express location or track a misdirected package. Each party bears the responsibility for insuring that the filings are in the Copyright Office by the deadline.

The form and content of all motions, petitions, objections, oppositions, and replies filed with the Office must be in compliance with §§ 251.44(b)-(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions, and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration. The 180-day arbitration period will be initiated on April 21, 2003. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected.

SO ORDERED

Marybeth Peters
Register of Copyrights

BY: _____


William J. Roberts, Jr.
Senior Attorney

DATED: October 21, 2002